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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re KIRSTEN D.C., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B166731
(Super. Ct. No. J60850)
(Ventura County)

THE PEOPLE,

Plaintiff and Respondent,

v.

KIRSTEN D.C.,

Defendant and Appellant.

In this proceeding under section 602 of the Welfare and Institutions Code, the juvenile court found true an allegation that Kirsten D.C. committed vandalism of \$400 and more in violation of Penal Code section 594, subdivision (b)(1) and trespass in violation of Penal Code section 602, subdivision (1). The juvenile court granted probation and ordered appellant to pay direct victim restitution of \$8,313.81. Appellant contends the vandalism finding is not supported by substantial evidence. We affirm.

Scott Silver owned a house that was under construction and had been vandalized. On the evening of April 2, 2003, he parked in front of the house, intending to spend the night watching for the vandals. At about 2 a.m. on April 3, Sliver watched three people walk across the back deck and into the house. As he called the police, he saw the

people walk into the garage from inside the house. There, they found a large tool box and some gas pipes. Two of the intruders used the gas pipes to hit the lock on the tool box in an effort to break it. The third person wandered around the garage, looking through the supplies that were stored there. Back inside the house, they tore ducting out of the ceiling. At least one of the intruders used glue to write on two sliding glass doors installed in the back of the house. The glue dripped down into the sides and bottom seals of the doors, ruining them. When the police arrived, one of the intruders ran away. Appellant and Ryan Roseman, an adult, were found hiding under the back deck, in a crawl space. The person who ran away is appellant's older brother, Jake.

Silver testified that, because of the lighting, he could not identify any of the individuals or their gender. Appellant testified that she was invited to the house by her brother and Roseman, to drink beer. She drank one beer, walked through the house and garage, and back out onto the deck before the police arrived. Her brother was the person who wrote on the windows. She told him to stop, but he "smirked" or "snickered" at her." Roseman testified that they were only at the house for about five minutes before the police arrived. They weren't there long enough for him to drink anything. He did not see anyone commit vandalism, but he did hear Kirsten tell Jake to stop doing something.

Relying on the rule that mere presence at the scene of the crime does not establish aiding and abetting (*People v. Verline* (2002) 100 Cal.App.4th 1146, 1149), appellant contends there is insufficient evidence to sustain the finding that she committed vandalism. We are not persuaded.

An aider and abettor is a person who acts with knowledge of the perpetrator's criminal purpose and with an intent to commit, encourage or facilitate the commission of the crime. (*People v. Jose T.* (1991) 230 Cal.App.3d 1455, 1460.) Presence at the crime scene is not, standing alone, sufficient to establish that a person aided and abetted the crime. (*Id.*) "Among the factors which may be considered in making the determination of aiding and abetting are: presence at the scene of the crime, companionship and conduct before and after the offense. [Citations.] In addition, flight is one of the factors which is relevant in

determining consciousness of guilt." (*In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094-1095.)

It is up to the trier of fact to weigh the evidence and determine the credibility of the witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We will affirm the dispositional order if there is any substantial evidence from which a reasonable trier of fact could find, beyond a reasonable doubt, that appellant aided and abetted vandalism. (*People v. Osband* (1996) 13 Cal.4th 622, 690; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 165.) There is. Appellant admits that she went to the house with Jake and Roseman, knowing they did not have permission to be there. She had time to drink a beer and wander through the house, into the garage and back outside to deck before the police arrived. She either tried to break the lock on the tool box or watched while Jake and Roseman did. Appellant did not leave after this vandalism occurred; instead, she stayed while her brother vandalized the sliding glass doors. She hid with Roseman when the police arrived.

A reasonable trier of fact could find on this evidence that, if appellant did not know about the vandalism plan before she walked into the house, she soon learned of it because she either saw or helped the others vandalize the tool box. By staying at the house and doing nothing to stop Jake from putting glue on the sliding glass doors, she encouraged or facilitated his offense. These findings are supported by substantial evidence and sufficient to sustain the petition. (*In re Lynette G., supra*, 54 Cal.App.3d at p. 1095.)

The dispositional order is affirmed.

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YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Brian J. Back, Judge
Superior Court County of Ventura

Molly Appelo, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Deborah J. Chuang, Erin M. Pitman, Deputy Attorneys General, for Plaintiff and Respondent.